

§2.1117

(b) No issue of law or fact shall be designated for resolution in an adjudicatory hearing unless the presiding officer determines that:

(1) There is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(2) The decision of the Commission is likely to depend in whole or in part on the resolution of that dispute.

(c) In making a determination under paragraph (b) of this section, the presiding officer shall not consider:

(1) Any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at the site, or any civilian nuclear power reactor for which a construction permit has been granted at the site, unless the presiding officer determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which a license application, authorization, or amendment to expand the spent nuclear fuel storage capacity is being considered; or

(2) Any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at that site, unless (i) such issue results from any revision of siting or design criteria by the Commission following such decision; and (ii) the presiding officer determines that such issue substantially affects the design, construction, or operation of the facility or activity for which a license application, authorization, or amendment to expand the spent nuclear fuel storage capacity is being considered.

(d) The provisions of paragraph (c) of this section shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations applied for under the Atomic Energy Act of 1954, as amended, before December 31, 2005.

(e) Unless the presiding officer disposes of all issues and dismisses the proceeding, appeals from the presiding officer's order disposing of issues and designating one or more issues for resolution in an adjudicatory hearing are

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interlocutory and must await the end of the proceeding.

[50 FR 41671, Oct. 15, 1985; 50 FR 45398, Oct. 31, 1985]

§2.1117 Applicability of other sections.

In proceedings subject to this subpart, the provisions of subparts A and G of 10 CFR part 2 are also applicable, except where inconsistent with the provisions of this subpart.

Subpart L—Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings

SOURCE: 54 FR 8276, Feb. 28, 1989, unless otherwise noted.

§2.1201 Scope of subpart.

(a) The general rules of this subpart govern procedure in any adjudication initiated by a request for a hearing in a proceeding for—

(1) The grant, renewal or licensee-initiated amendment of a materials license subject to parts 30, 32 through 35, 39, 40, or 70 of this chapter, with the exception of a license amendment related to an application to transfer a license; or

(2) The grant, renewal, or licensee-initiated amendment of an operator or senior operator license subject to part 55 of this chapter.

(3) The amendment of a part 50 license following permanent removal of fuel from the part 50 facility to an authorized facility for licensees that have previously made declarations related to permanent cessation of operations and permanent removal of fuel from the reactor in accordance with §50.82(a)(1). Subpart L hearings for the license termination plan amendment, if conducted, must be completed before license termination.

(b) Any adjudication regarding, (1) a materials license subject to parts 30, 32 through 35, 39, 40, or 70, or an operator or senior operator license subject to part 55 that is initiated by a notice of hearing issued under §2.104, or (2) a notice of proposed action under §2.105, or a request for hearing under subpart B of 10 CFR part 2 on an order or a civil